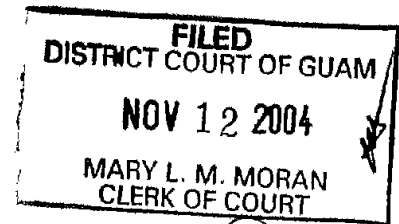


1 LEGISLATIVE COUNSEL  
2 *I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN*  
3 Therese M. Terlaje  
4 155 Hesler Place  
5 Hagåtña, Guam 96910  
6 Telephone: 472-3253 Facisimile: 472-3525

7 On behalf of  
8 *I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN*



9 **IN THE DISTRICT COURT OF GUAM**

10 JAY MERRILL, etc, et al.,

11 Plaintiff,

12 vs.

13 THE GUAM ELECTION COMMISSION,  
14 et al.

15 Defendants.

Civil Case No. CIV04-00046

**OPPOSITION TO AG'S MOTION TO  
STRIKE APPEARANCE OF  
LEGISLATIVE COUNSEL AND TO  
STRIKE OBJECTION TO PROPOSED  
STIPULATION AND ORDER FOR  
PRELIMINARY INJUNCTION**

17 Comes now *I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN'* and opposes the  
18 Attorney General's motion to strike the appearance of Legislative Counsel on behalf of the 27<sup>th</sup>  
19 Guam Legislature. *I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN'* does also  
20 oppose the Attorney General's motion to strike the Guam Legislature's objection to the proposed  
21 stipulation for preliminary injunction. This opposition is based on the accompanying Memorandum  
22 of Points and Authorities and the record on file in this matter.

23  
24  
25  
ORIGINAL

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 After being served the Complaint by the Plaintiff on October 21, 2004, Legislative Counsel  
4 appeared on behalf of the Legislature at the Superior Court *ex parte* hearing on this matter on  
5 October 22, 2004. The AG also was present at the Superior Court hearing but did not enter an  
6 appearance on behalf of the Guam Legislature. The Guam Legislature is represented by  
7 Legislative Counsel pursuant to 2 G.C.A. §1112.

8 § 1112. Organization of Legislature.

9 Upon the election of the Speaker, the Legislature shall proceed to  
10 organize, adopting rules governing its procedure and with the election of a  
11 Vice-Speaker, Legislative Secretary and Secretary General of the Guam  
12 delegation to the Asian Pacific Parliamentarians Union, who shall be  
13 members of the Legislature, and the following attaches: Sergeant-at-  
14 Arms, Chaplain, Recording Secretary, and Legislative Counsel, none of  
whom shall be a member of the Legislature. All such officers shall be  
elected for the entire term of the Legislature and shall serve during all  
regular and special sessions thereof, unless otherwise ordered by a  
majority vote of the Legislature.

15 The 27<sup>th</sup> Guam Legislature adopted its Standing Rules on January 2, 2002, and those rules  
16 expressly provide for representation of the Legislature in Rule 16.08, which provides in pertinent  
17 part:

18 **Section 16.08.** The legal services of the Legislative  
19 Counsel shall be available to all Members. Assistant Legislative  
20 Counsels may be designated by the Speaker and the Chairperson of the  
Committee on Rules in order to assist the Legislative Counsel when a  
conflict arises, or when otherwise deemed necessary. The Legislative  
21 Counsel shall act under the general supervision of the Chairperson of the  
Committee on Rules pursuant to a written contract, and shall:

- 22 (i) act as legal counsel for *I Liheslaturan Guåhan*; . . .  
23 (ix) represent *I Liheslaturan Guåhan* in any legal matters before any  
courts

24 Rule 17.01.01 of the Standing Rules governs court action on behalf of *I Liheslaturan Guahan*, and  
25 provides in pertinent part:

1                   **Section 17.10.01. Jurisdiction.** Subject and matters which  
2 are to be referred to the Committee on Rules shall include, but are not  
3 limited to, the following:

- 4                   (i) proposed amendments to the Rules and resolutions and  
5 bills relating to the business, budget, design and activities  
6 of *I Liheslaturan Guåhan*; . . .  
7                   (vii) matters relating to the defense or initiation of court action  
8 on behalf of *I Liheslaturan Guåhan*, which shall be  
9 authorized by Rules Resolution

10                   The cognizance of the Attorney General is set out in 5 G.C.A. §30102. On March 25,  
11 1999, subsequent to the passage of the Guam Organic Act amendments of 1998 allowing for an  
12 elected Attorney General, §30102 was repealed and reenacted in P.L. 25-03:IV:19 to  
13 unequivocally exclude the AG's cognizance over the Legislative Branch, with the changes  
14 underscored below:

15                   § 30102. Department of Law, Cognizance.

16                   (a) Notwithstanding any other provision of law, the Attorney  
17 General shall have cognizance of all legal matters, excluding the  
18 Legislative and Judicial Branches of the government of Guam, involving  
19 the Executive Branch of the government of Guam, its agencies,  
20 instrumentalities, public corporations, and autonomous agencies and the  
21 Mayors Council, all hereinafter referred to as 'agency'. Where statute any  
22 other law permits any an agency or autonomous public corporation to hire  
23 or retain counsel other than the Attorney General, this shall not preclude  
24 said agency or public corporation from requesting the services of the  
25 offices of the Attorney General. The Attorney General from providing  
services to the agency on request by the agency at its sole discretion;  
provided that said the agency or autonomous public corporation shall  
reimburse the Office of the Attorney General for such services from funds  
of said agency or autonomous public corporation the agency's budget.  
Reimbursement from any agency's budget shall be subject to the  
appropriation of funds for that purpose. Reimbursement rates or fees  
authorized hereunder shall be established within 180 days pursuant to the  
administrative adjudication act. Said reimbursement shall be deposited in  
the General Fund and credited to the Office of the Attorney General. In  
addition, and notwithstanding any other law to the contrary, any agency  
or autonomous public corporation of the government of Guam may  
advance funds to the office of the Attorney General for services and  
incidental travel to be rendered by said office on behalf of said agency or  
autonomous public corporation.

1 The Organic Act amendments of 1998 allowed for an alternative AG selection process to  
2 the one then mandated by the Organic Act (Governor appointment and Legislature consent) and  
3 nothing in the Act or its history indicate an intention by Congress to bestow on the AG any  
4 additional powers beyond those as dictated by the laws of Guam. 48 U.S.C. § 1421 g(d); 48  
5 U.S.C. § 1423a ("The legislative power of Guam shall extend to all rightful subjects of legislation  
6 not inconsistent with the provisions of this chapter and the laws of the United States applicable to  
7 Guam.")

8 Although designated the "Chief Legal Officer" the AG was also deemed to, if appointed,  
9 "serve at the pleasure of the Governor of Guam". 48 U.S.C. §1421g(d). When the Guam  
10 Legislature allowed the election of the attorney general by passing P.L. 25-44, there were no  
11 changes made to the authority of that office except for the deletion of "or assigned to him by the  
12 Governor" from the end of 5 G.C.A. 30109(h), which now reads " Perform such other duties as are  
13 required by law." P.L. 25-44: 4.

14 Even the Attorney General's common law powers are governed by 5 G.C.A. §30103, which  
15 has not been amended since the 13<sup>th</sup> Guam Legislature.

16 In representing the executive branch in the execution of laws, it is clear that the Attorney  
17 General may represent the government of Guam in the institution of a suit by and on behalf of the  
18 territory. Such an act is the prerogative of the executive branch, as an act "executing the laws"  
19 applicable to Guam. Government of Guam v. United States, D.C.Guam 1982, Civ. No. 82-0001.

20 The Complaint regarding Prop A does not name the government of Guam as the plaintiff or  
21 defendant, and specifically names the Legislature and the Governor separately and sets forth their  
22 very contrasting roles in the election and in the event the court must fashion a remedy. See  
23 Complaint p. 3, ¶¶ 8, 9, 10; p. 11, ¶¶ 42, 43; and p. 13, ¶ 3. It would be a travesty of the  
24 separation of powers doctrine to allow the Attorney General to represent both the executive branch  
25 and the legislative branch where the defenses and remedy would entail separation of powers issues

1 between the legislative, executive, and potentially even the judicial branch.

2 Based on its published schedule, a similar issue involving the A.G.'s ability to represent an  
3 autonomous entity of the government is under consideration by the Supreme Court of Guam and  
4 no decision has yet been made. See A.B. Won Pat Guam International Airport Authority v.  
5 Moylan, Supreme Court Case No.: CVA2004-008.

6 In the AG's Motion to Strike the Entry of Appearance by the Legislative Counsel on behalf  
7 of the 27<sup>th</sup> Guam Legislature, the AG cites Moylan v. Camacho, Superior Court of Guam, SP230-  
8 03, "Decision and Order" dated Nov. 10, 2003, as authority for his contention that he alone  
9 represents the Legislature. The Superior Court of Guam in Moylan v. Camacho held that the AG  
10 had standing and authority to bring an action against the Governor of Guam, when brought in the  
11 interest of the people. Id at p. 38. That holding does not apply to this case, where the government  
12 of Guam is neither plaintiff nor defendant and there is no suit being brought by the AG on behalf  
13 of the people. The Legislature is being named specifically as a Defendant, along with different  
14 government entities of the executive branch and the Governor of Guam, and this case potentially  
15 will involve issues of the separation of powers between the branches.

16 This potential conflict of interest is readily apparent by the AG's attempt to enter into a  
17 stipulation on behalf of the Legislature containing assertions absolutely contrary to the  
18 Legislature's mandate on this matter as contained in P.L. 27-108. It is also notable that in addition  
19 to wanting to exclusively represent the Legislature, the AG without filing a Motion to Dismiss the  
20 Legislature, asserts in a footnote to the Motion to Strike that the Legislature is "due to be dismissed  
21 immediately". Motion to Strike, p. 2, footnote no. 1.

22 The Legislature should be allowed to be represented by its own counsel in this action and  
23 to diligently protect its interest where the other branches of the government may have conflicting  
24 interests. *I Mina' Bente Siete Na Liheslaturan Guåhan* respectfully requests this Court deny the  
25 Motion to Strike.

1  
2 Respectfully submitted this 12<sup>th</sup> day of November, 2004.

3 **OFFICE OF THE LEGISLATIVE COUNSEL**  
4 **I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN**

5   
6 \_\_\_\_\_

7 THERESE M. TERLAJE

8 *On behalf of*

9 **I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN**  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25